



Press and Information

Court of Justice of the European Union
PRESS RELEASE No 122/17
Luxembourg, 20 November 2017

Order of the Court in Case C-441/17 R
Commission v Poland

Poland must immediately cease its active forest management operations in the Białowieża Forest, except in exceptional cases where they are strictly necessary to ensure public safety

If Poland is found to have infringed this order, the Court will order it to pay to the Commission a penalty payment of at least €100 000 per day

In 2007, the Commission designated the Natura 2000 Puszcza Białowieska site in accordance with the Habitats Directive¹ as a site of 'Community importance' due to the presence of natural habitats and the habitats of certain animal and bird species. That site is also a special protection area for birds under the Birds Directive.² The Białowieża Forest is one of the best preserved natural forests in Europe, characterised by large quantities of dead wood and ancient trees, some of which are centuries old.

In response to an outbreak of Spruce Bark Beetle, in 2016, the Polish Minister for the Environment authorised an increase in logging in the Forest District of Białowieża, as well as active forest management operations in areas previously outside the scope of such activity, such as 'sanitary pruning', reforestation and restoration. Work thus began on the removal of dead trees and trees affected by the Spruce Bark Beetle over an area of approximately 34 000 hectares of the Natura 2000 Puszcza Białowieska site, which has a total surface area of 63 147 hectares.

Taking the view that those active forest management operations have a negative impact on the maintenance of favourable conservation conditions for natural habitats and the habitats of the animal and bird species whose conservation was the reason for the designation of the Natura 2000 Puszcza Białowieska site, the Commission, on 20 July 2017, brought an action against Poland for failure to fulfil its obligations³ under the Habitats Directive and the Birds Directive. The Commission also asked the Court, pending the judgment of the Court in the main proceedings, to order Poland to cease, except where there is a threat to public safety, the active forest management operations, including, inter alia, the removal of centuries-old dead spruces and the felling of trees as part of increased logging in the Białowieża Forest area.

By order of 27 July 2017, the Vice-President of the Court provisionally granted that request pending the adoption of an order terminating the proceedings for interim measures.

In today's order, the Court notes that the court hearing an application for interim relief may order interim measures only if (i) it is established that such an order is justified, *prima facie*, in fact and in law and (ii) the order is urgent in so far as, to avoid serious and irreparable damage to the interests of the European Union, represented by the Commission, it must be made and produce its effects before a final decision is reached. Where necessary, the court hearing the application must also weigh up the interests involved.

¹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7), as amended by Council Directive 2013/17/EU of 13 May 2013 (OJ 2013 L 158, p. 193).

² Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7), as amended by Directive 2013/17.

³ Case [C-441/17](#).

First, with regard to the requirement for a *prima facie* case, the Court notes that that condition is satisfied, since there is a major legal or factual disagreement whose resolution is not immediately obvious, so that the action is not *prima facie* without reasonable substance. In particular, the arguments relied on by the Commission do not appear, *prima facie*, to be unfounded, and it is not inconceivable that the active forest management operations at issue fail to respect the protection requirements under the Habitats Directive and the Birds Directive.

Second, concerning the requirement relating to urgency, the Court points out that the purpose of interim proceedings is to guarantee the full effectiveness of the future final decision in order to ensure that there is no lacuna in the legal protection provided by the Court of Justice. For the purpose of attaining that objective, urgency must be assessed in the light of the need for an interlocutory order in order to avoid serious and irreparable damage to the party seeking the interim relief. In the present case, the Commission maintains that the active forest management operations at issue are likely to cause irreparable and serious damage to the environment. According to the Court, since those operations involve the removal of old, dying or dead trees, including both those affected by bark beetle and those unaffected, it does seem very likely that they will have an impact on the relevant habitats. That is also shown by the fact that, until 2016, one of the measures for conserving those habitats was a prohibition on operations of that type in certain areas. The Court notes that such consequences are likely to constitute serious and irreparable damage for the interests of the EU and for its common heritage. Indeed, if the Commission's allegations of Poland's failure to fulfil obligations are established, once it has occurred, the damage caused by the felling and removal of those trees would be impossible to rectify subsequently. Consequently, the Court finds that the urgency of the interim measures requested by the Commission has been established.

Third, the Court considers whether the weighing up of interests pleads in favour of the granting of interim measures. The Court finds that, on the basis of the material provided by the parties, the interests to be weighed up are, on the one hand, the protection of the habitats and species from a potential threat in the form of the active forest management operations at issue and, on the other hand, the interest of preventing damage to the natural habitats of the Białowieża Forest resulting from the presence of the Spruce Bark Beetle. According to the Court, Poland has not provided reasons why the cessation of those operations until judgment is given in the main proceedings (that is to say, probably for only a few months from the date of today's order) is likely to cause serious and irreparable damage to that habitat. In addition, the fact, referred to by Poland, that such operations are limited to a restricted area of the Natura 2000 Puszcza Białowieska site does not support Poland's case; on the contrary, it tends to reinforce the Commission's position that a temporary cessation of those operations would not lead to the site suffering any serious damage. Consequently, in the absence of detailed information on the harm likely to be caused in the short term by the Spruce Bark Beetle, it is more urgent to prevent the damage that a continuation of the operations at issue would cause to the protected site.

The Court thus concludes that **the Commission's application for interim measures must be granted.**

However, in accordance with that application, **it is necessary to exclude**, exceptionally, **from the interim measures ordered active forest management operations** that are **strictly necessary and proportionate in order to ensure, directly and immediately, the public safety of persons**, on the condition that other, less radical measures are impossible for objective reasons. Consequently, such operations can only be undertaken when they are the sole means of ensuring the public safety of persons in the immediate vicinity of transport routes or other significant infrastructure where it is impossible to ensure such safety, for objective reasons, through other, less radical measures, such as adequate signposting of the danger or a temporary ban, backed up, where appropriate, by appropriate penalties, on public access to the immediate vicinity.

The Court refuses Poland's request for the lodging of security. Poland submits that, in the event that the Commission's application is granted, it is necessary to make compliance with the order for interim measures conditional on the lodging by the Commission of security in an amount equal to the cost of the damage that might arise as a result of compliance with that order, namely

PLN 3 240 000 000 (around € 757 000 000), such amount being calculated on the basis of Polish legislation that requires that compensation be paid where land loses its status as forested land. The Court states in that regard that the lodging of security can be envisaged only if the party against which it is ordered is liable for sums which the security is intended to cover and there is a risk of that party becoming insolvent. That cannot be the case in the present circumstances, since, in any event, there is no reason to expect that the European Union would be unable to meet its obligations if it were required to pay compensation.

Lastly, **the Court examines the Commission's additional application** that Poland be ordered to pay a **penalty payment** if it fails to respect the directions set out in today's order. The Commission argues that, subsequent to Poland being notified of the order of the Vice-President of the Court of 27 July 2017 requiring that certain operations be temporarily suspended, those operations have continued, in breach of the interim measures imposed. The Court observes in that regard that, in the system of legal remedies established by the Treaty, the court hearing an application for interim measures may, in particular, issue, on a provisional basis, appropriate directions to the other party. **Article 279 TFEU confers on the Court the power to prescribe any interim measures that it deems necessary in order to ensure that the final decision is fully effective. Such a measure may entail, inter alia, provision for a penalty payment to be imposed** should that order not be respected by the relevant party. Since the prospect of a penalty payment being imposed in such a situation discourages the relevant Member State from failing to respect the interim measures ordered, it bolsters the effectiveness of those measures and guarantees the full effectiveness of the final decision, thus falling entirely within the ambit of the objective of Article 279 TFEU. Providing for the imposition of penalty payments for the sole purpose of ensuring that the interim measures at issue are complied with does not prejudice the future decision in the main action. In the present case, there is sufficient material in the file to give the Court grounds for doubting that Poland has complied with the order of the Vice-President of the Court of 27 July 2017 or that it is prepared to adhere to today's order until the date of the final decision. In such circumstances, it appears necessary to bolster the effectiveness of the interim measures granted today by providing for penalty payments to be imposed if Poland fails to comply immediately and fully with the interim measures, for the purpose of discouraging Poland from delaying its compliance with today's order. To that end, **the Court orders Poland to send to the Commission**, within 15 days of notification of the order, **details of all measures** that it has adopted in order to comply fully, detailing, with justifications, the active forest management operations at issue that it intends to continue because they are necessary to ensure public safety. If the Commission is of the view that Poland has failed to comply fully with the order, it will be able to request that proceedings be resumed. **The Court will then decide, by way of a new order, whether today's order has been infringed. If there is found to be an infringement, the Court will order Poland to pay to the Commission a penalty payment of at least € 100 000 per day**, from the date of notification of that order to Poland until Poland complies with today's order or until final judgment in the case is delivered.

NOTE: The Court will deliver final judgment on the substance of this case at a later date. An order as to interim measures is without prejudice to the outcome of the main proceedings.

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under EU law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the order is published on the CURIA website.

Press contact: Holly Gallagher ☎ (+352) 4303 3355